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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/150,692 09/10/98 BACHAND

G 5137

EXAMINER

IM22/0424

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BECKER, D

ART UNIT

PAPER NUMBER

1761

DATE MAILED:

04/24/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/150,692

Applicant(s)

Bachand et al

Examiner

Drew Becker

Group Art Unit

1761

☒ Responsive to communication(s) filed on Feb 29, 2000

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-20 is/are pending in the application.

Of the above, claim(s) 11-13 is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-10 and 14-20 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## DETAILED ACTION

### *Information Disclosure Statement*

1. The information disclosure statement filed February 29, 2000 fails to comply with 37 CFR 1.97(c) because it lacks the fee set forth in 37 CFR 1.17(p). It has been placed in the application file, but the information referred to therein has not been considered.

### *Election/Restriction*

2. Applicant's election with traverse of group <sup>I</sup>II, claims 1-10 and 14-20 in Paper No. 6 is acknowledged. The traversal is on the ground(s) that the apparatus of claims 11-13 is limited to food production and therefore would require the same search as group <sup>II</sup>I. This is not found persuasive because intended methods of use are not given patentable weight in apparatus claims. The apparatus of group I can be used to apply any type of fluid to any type of material in a web winding machine not limited to adhesives or even food materials, for instance applying adhesives or ink to a paper winding machine.

The requirement is still deemed proper and is therefore made FINAL.

### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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4. Claims 1-10 and 14-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. The term "temporarily" in claims 1 and 14 are relative terms which render the claims indefinite. The term "temporarily" is not defined by the claims, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is not clear how long a period of time is defined by "temporarily".

6. The term "unintentional" in claims 1 and 14 are relative terms which render the claims indefinite. The term "unintentional" is not defined by the claims, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

7. The term "considerable" in claim 2 is a relative term which renders the claim indefinite. The term "considerable" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

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***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

9. Claim 14 is rejected under 35 U.S.C. 102(a) as being anticipated by WO 97/33822.

WO 97/33822 teach a rolled food item comprising a strip of food material (page 6, line 35), a paper strip (page 7, line 11), rolling the strips together (page 9, line 1), and the food strip having an area at the trailing edge with a greater moisture content, provided by an edible adhesive, which holds the roll together (page 16, line 5).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1-4 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 97/33822.

WO 97/33822 teach a rolled food item and a method of making a rolled food item comprising a strip of food material (page 6, line 35), a paper strip (page 7, line 11), rolling the strips together

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(page 9, line 1), and the food strip having an area at the trailing edge with a greater moisture content, provided by an edible adhesive, which holds the roll together (page 16, line 5). It would have been obvious to one of ordinary skill in the art to spray the edible adhesive of WO 97/33822 onto the food strip since spraying the edible adhesive would produce a greater area of surface coverage for the edible adhesive thereby creating a stronger bond which would resist unrolling better than a single drop. It would have been obvious to one of ordinary skill in the art to use water free of adhesives with the invention of WO 97/33822 since WO 97/33822 teach the use of an edible adhesive, of which water is a type as evidenced by Cherukuri et al [Pat. No. 4,352,825] which teach the additional tackiness and stickiness of confections when an increased moisture content is present (column 1, line 23).

12. Claims 5-10 and 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 97/33822 as applied to claims 1-3 and 14 above, in view of Zoss [Pat. No. 5,853,836]. WO 97/33822 teach the above mentioned concepts, the food material being dehydrated fruit material (page 7, line 11), and the food strip being cut to the same length as the paper (page 8, line 23). WO 97/33822 do not teach the paper being silicon parchment paper and the paper being wider than the food strip. Zoss teaches a rolled food product and a method of making a rolled food product comprising the use of silicon parchment paper (column 3, line 53) and the paper being wider than the food strip (column 3, lines 57-62). It would have been obvious to one of ordinary skill in the art to incorporate the paper structure of Zoss into the invention of WO 97/33822 since Zoss teaches that silicon parchment paper is strong enough to resist tearing

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without being bulky (column 3, line 55) and since having the paper be wider than the food strip prevents the food strip from rubbing against fabrication equipment (column 3, line 63 to column 4, line 3).

***Response to Arguments***

13. Applicant's arguments with respect to claims 1-10 and 14-20 have been considered but are moot in view of the new ground(s) of rejection.

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Young et al [Pat. No. 3,596,428] teach a process comprising applying water to a starch material in order to increase tackiness and thereby create a seal (column 1, lines 17-25).

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew Becker whose telephone number is (703)-305-0300. The examiner can normally be reached on Monday-Thursday from 7:00 am to 4:00 pm and every other Friday from 7:00 am to 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gabrielle Brouillette, can be reached on (703)-308-0756. The fax number for this Group is (703)-305-3602.

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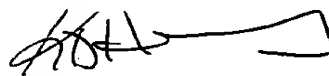
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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0651.

Drew Becker

April 17, 2000

A handwritten signature in black ink, appearing to read 'KH', followed by a long horizontal line that ends in a small hook.

**KEITH HENDRICKS  
PRIMARY EXAMINER**